



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,057	08/30/1999	MICHAEL RUFFIN	PO9-98-157H	9966

7590 12/11/2002

Floyd A. Gonzalez
Intellectual Property Law
2455 South Road, P386
Poughkeepsie, NY 12601

EXAMINER

COSIMANO, EDWARD R

ART UNIT	PAPER NUMBER
----------	--------------

3629

DATE MAILED: 12/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/386,057

Applicant(s)

RUFFIN ET AL.

Examiner

Edward R. Cosimano

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-29 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

1. Applicant should note the changes to patent practice and procedure:
 - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997; and
 - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000.
2. The use of various trademark(s) at page(s) pages 22, 23, 24, 30, 31, 34, 35, 41 & 42 has been noted in this application. Any trademarks should be capitalized wherever they appear and be accompanied by the generic terminology.
 - 2.1 Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.
3. The drawings are objected to because
 - A) the following errors have been noted in the drawings:
 - (1) The drawings are objected to as failing to comply with 37 CFR § 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:
 - (a) 403a through 403h and 404a through 404d of fig. 4 as described in the paragraph between page 18, line 26, and page 19, line 21, "In Figure 4 a ... spaces 403 a-h and 404 a-d ... programs 403 a-h ... programs 403 a-h, data spaces 404 a-d ... undertaking of a BSA process.";
 - (b) 505 of fig. 5 as disclosed in the paragraph between page 20, line 20, and page 21, line 16, "This determination process 500 ... step 505 ... circumstances of the particular opportunity.";
 - (c) 1118 of fig. 11B as disclosed in the paragraph at page 45, lines 7-15, "Next in step 1118 ... the maximum Tpm (1121)."; and
 - (d) 1023 as disclosed in the paragraph between page 47, line 26, and page 48, line 2, "In step 1204 ... step 1023, ... to abort or continue on mismatches.".

Art Unit: 3629

(2) the drawings lack figure 11 as disclosed in the paragraph at page 41, lines 8-10, "Turning back to the process ... Figure 11 comprises ... 1004 in greater detail."

(3) as required by 37 CFR § 1.84(u(1)) figures 11a and 11b should be designated as "11A" and "11B", respectively.

(4) as can be seen in fig. 12, fig. 12 lacks the "YES" legend for box 1207, note the context of the disclosure at page 49, lines 5-9, "Steps 1201-1207 are repeated ... for each application is provided."

3.1 A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3.2 Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

4. The disclosure is objected to because of the following informalities:

A) applicant must update:

(1) the continuing data on page 1;

with the current status of each of the referenced applications, e.g., --now abandoned--, or --now patent #?--, or --which is abandoned and now serial number #?--, etc.

B) the specification lacks an explicit reference to the nature of:

(1) reference legend(s):

(a) 900 of fig. 9 at page 34, lines 10-27, "Turning now to a more ... UNIX platform, experienced availability etc."; and

(2) how the program proceeds after box(es):

(a) 805 of fig. 8 if the inquiry is "YES" at page 33, lines 2-6, In step 806 ... via reference to Figure 10.";

as required by 37 CFR § 1.84(p(5)) and 37 CFR § 1.121(e). It is noted that merely mentioning a number with out mentioning the device or operation of the step relies on

Art Unit: 3629

the drawing to provide support for the disclosure and not to aid in the understanding of the invention, as is the purpose of the drawings (37 CFR § 1.81(a,b)).

C) the following errors have been noted in the specification:

(1) as can be seen in figs. 11A and 11B, in the paragraph at page 11, lines 11-12, FIG. 11a and 11b depict ... sizer tool;”, at line 1 of this paragraph “FIG. 11a and 11b” should be --FIGS. 11A and 11B--, note 37 CFR § 1.84(u(1)).

(2) as can be seen in fig. 4 and from the context of the paragraph between page 18, line 26, and page 19, line 21, “In Figure 4 a ... spaces 403 a-h and 404 a-d ... programs 403 a-h ... programs 403 a-h, data spaces 404 a-d ... undertaking of a BSA process.”, at:

(a) lines 12, 17 & 23 of this paragraph “403 a-h” should be – 403a-403h--; and

(b) lines 12 & 23 of this paragraph “404 a-d” should be –404a-404d--.

(3) as can be seen in fig. 5 and from the context of the paragraph at page 22, lines 6-18, “Upon successfully qualifying ... process steps 508 ... the engagement is ended 508.”, at line 11 of this paragraph “steps 508” should be – step 507--.

(4) as can be seen from fig. 6 and from the context of the paragraph at page 23, lines 18-27, “Upon providing the .. (404) ... 606 as $C_{tot}\$_{tot}$ (current).”, at line 7 of this paragraph “(404)” should be –(604)--.

(5) as can be seen from fig. 7 and from the context of the paragraph at page 26, lines 24-31, “Turning now to Figure 7 ... graph 500 ... from the consolidation effort.”, at line 4 of this paragraph “500” should be –700--.

(6) as can be seen from fig. 9 and from the context of the paragraph between page 35, line 15, and page 36, line 10, “In step 905 the ... step 705 ... and previous identified opportunities.”, at line 19 of this paragraph “705” should be –905--.

(7) as can be seen from figs. 11A and 11B and from the context of the paragraph at page 41, lines 8-10, "Turning back to the process ... Figure 11 comprises Figures 11a and 11b ... 1004 in greater detail.", at line 2 of this paragraph "Figure 11 comprises Figures 11a and 11b" should be --Figures 11A and 11B--.

(8) as can be seen in fig. 11A and from the context of the paragraph at page 43, lines 7-12, "Since the workload ... (N) 911 to ... Tpm would be multiplied by 5.", at line 3 of this paragraph "911" should be --1111--.

(9) as can be seen in fig. 11A and from the context of the paragraph at page 43, lines 13-26, "The resultant total Tpm ... factor 912 ... machines as determined in step 1111.", at line 2 of this paragraph "912" should be --1112--.

(10) as can be seen from fig. 11B and from the context of the paragraph at page 45, lines 7-15, "Next in step 1118 in Figure 11b ... the maximum Tpm (1121).", at line 1 of this paragraph "Figure 11b" should be --Figure 11B--.

(11) as can be seen from fig. 11B and from the context of the paragraph at page 45, lines 7-15, "Next in step 1118 in Figure 11b ... 919, 920 and 921 ... the maximum Tpm (1121).", at line 6 of this paragraph "919, 920 and 921" should be --1119, 1120 and 1121--.

(12) the specification lacks a statement of --We claim:--, (see MPEP 608.01(m)).

D) The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. Note the paragraph between page 41, line 21, and page 42, line 4, "Upon entering the workload ... "<http://as.ideascp.com> presented by Ideas International Corporation.", at line 13 of this paragraph "<http://as.ideascp.com>" should either be deleted or should be --as.ideascp.com--.

Appropriate correction is required.

Art Unit: 3629

5. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(g)-1.121(h).

6. This application is in condition for allowance except for the following formal matters:

See above in sections 2-5.

6.1 Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

6.2 A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET TO EXPIRE 2 (TWO) MONTHS FROM THE DATE OF THIS LETTER.

7. The following is an Examiner's Statement of Reasons for Allowance:

A) the prior art, for example, either the News Release article or Robertazzi et al, disclose determining the costs associated with the work load assigned to a machine/device.

B) however, in regard to claims 1, 15 & 29, the prior art does not teach or suggest an system in which:

(1) determining usage for a first and second computer platform;

(2) determining a processing capacity for the first and second computer platform based on usage information for the first and second computer platforms;

(3) determining a cost and capacity measurement for the first and second computer platform;

(4) determining the amount of processing capacity that is to be migrated from the first computer platform to the second computer platform; and

(5) deriving an adjusted cost and capacity measurement for the first and second computer platform after the migration.

Claims 2-14 & 16-28 are allowable for the same reason.

Art Unit: 3629

7.1 Any comments considered necessary by applicant must be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably **accompany** the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

8. The examiner has considered the prior art cited in the parent application.

9. The examiner has cited prior art of interest, for example:

A) Ruffin et al (6,249,769), which discloses the evaluation of the needs of a business.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell, can be reached on (703)-305-9768. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

10.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

10.2 The fax phone number for OFFICIAL FAXES is (703) 746-7239.

10.3 The fax phone number for AFTER FINAL FAXES is (703) 746-7238.

05/03/02



Edward R. Cosimano

Primary Examiner A.U. 3629